

21

L E A S E

BALKHOUSE PROPERTIES CORP.

Lessor

AND

THE KROGER CO.

Lessee

Dated as of April 1, 1983

Covering Property Located in
San Marcos, Texas

ARTICLE XXI

21. Holding Over. If Lessee shall for any reason remain in possession of the Leased Property after the expiration of the Term or earlier termination of the Term hereof, such possession shall be as a month-to-month tenant during which time Lessee shall pay as rental, the aggregate of (i) Basic Rent on the first day of each month at a rate equal to one-twelfth of the amount of annual Basic Rent accrued during the last Year of the preceding Term, (ii) all Additional Rent and (iii) all other sums, if any, payable by Lessee pursuant to the provisions of this Lease. During such period of month-to-month tenancy, Lessee shall be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights thereunder other than the right, to the extent given by law to month to month tenancies, to continue its occupancy and use of the Leased Property. Nothing contained herein shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease.

ARTICLE XXII

22. No Recourse To Lessor. No recourse shall be had against the Lessor, or its employees, officers, directors or shareholders for any claim based on any failure by the Lessor in the performance or observance of any of the agreements, covenants or provisions contained in this Lease. In the event of any such failure, recourse shall be had solely against the Leased Property.

ARTICLE XXIII

23. Loss of Benefit. The loss of or decrease in the enjoyment and beneficial use of the Leased Property in consequence of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise, or in consequence of foreclosures, attachments, levies or executions (other than by Lessor and those claiming from, through or under Lessor) shall be borne by Lessee, and Lessor shall in no event be answerable or accountable therefor. None of the events mentioned in this Section shall entitle Lessee to any abatement of Basic Rent or Additional Rent, except as specifically provided herein.

ARTICLE XXXVIII

38. Miscellaneous. Anything contained in this Lease to the contrary notwithstanding, all claims against, and liabilities of, the Lessee arising prior to any date of termination of this Lease shall survive such termination. If any term or provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby. If any late charges provided for in any provision of this Lease are based upon a rate in excess of the maximum rate permitted by applicable law, the parties agree that such charges shall be fixed at the maximum permissible rate. Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated except by an instrument in writing and in recordable form signed by Lessor and Lessee. All the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The headings in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. This Lease shall be governed by and construed in accordance with the laws of the State in which the Land is located.

ARTICLE XXXIX

39. Memorandum of Lease. Lessor and Lessee shall, promptly upon the request of either, enter into a short form memoranda of this Lease, in form suitable for recording under the laws of the state in which the Leased Property is located, in which reference to this Lease shall be made.